

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

WILLIAM L. RESPESS, *et al.*,)
)
Plaintiffs,)
)
v.) Case No. 6:24-cv-00028-NKM
)
VMI ALUMNI ASSOCIATION,)
)
Defendant.)
)

MOTION TO DISMISS THE AMENDED COMPLAINT

Defendant VMI Alumni Association (“VMIAA”), by counsel, respectfully moves this Court to dismiss the Amended Complaint filed by Plaintiffs, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As explained further in VMIAA’s supporting Memorandum, the Court should dismiss the Amended Complaint for the following reasons:

1. Count One of the Amended Complaint fails to state a claim under 42 U.S.C. § 1983 because:
 - a. Many claims are barred by the applicable two-year statute of limitations;
 - b. Plaintiffs fail to plausibly allege that VMIAA, a private Virginia nonstock corporation, acted under color of state law when it took certain actions; and
 - c. Plaintiffs fail to plausibly allege that certain challenged internal governance actions of VMIAA constitute the deprivation of a cognizable constitutional or federally protected right.
2. Count Two of the Amended Complaint fails to state a claim under 42 U.S.C. § 1983 because:

- a. The Suspended Plaintiffs¹ fail to plausibly allege that VMIAA, a private Virginia nonstock corporation, acted under color of state law when it took certain actions; and
- b. The Suspended Plaintiffs fail to plausibly allege that the challenged internal governance actions of VMIAA constitute the deprivation of a cognizable constitutional or federally protected right.

3. Count Three of the Amended Complaint fails to state a claim under Virginia's business conspiracy statute, Virginia Code §§ 18.2-499 and 500, because:

- a. Plaintiffs/the Suspended Plaintiffs only seek recovery for alleged injury to personal reputational interests, which are not cognizable under Virginia's business conspiracy statute; and
- b. Plaintiffs/the Suspended Plaintiffs fail to plausibly and/or with particularity allege the elements of a statutory business conspiracy claim, including concerted action.

4. Count Four of the Amended Complaint fails to state an *ultra vires* claim under Virginia Code § 13.1-828 because:

- a. The alleged conduct, in each instance, was lawful, authorized, and/or otherwise proper under the Virginia Nonstock Corporation Act, Va. Code § 13.1-801 *et seq.*, and VMIAA's governing corporate documents;
- b. Plaintiffs cannot now, in this Court, challenge articles of incorporation that the Virginia State Corporation Commission ("Commission") has

¹ The seven suspended/expelled Plaintiffs are: Timothy Cordle, Robert C. Morris, Jr., Mr. McCrary, Peter M. McCrary, Tracy Porter, Michael Staso, and Ronald M. Stelmasczyk. Collectively, they will be referred to herein as the "Suspended Plaintiffs."

determined complied with the requirements of law, *see* Va. Code § 13.1-813(B); and

- c. The alleged conduct—even if improper (which it was not)—cannot be an *ultra vires* act under Virginia Code § 13.1-828.

5. One Plaintiff—the executor to the estate of Peter K. McCrary—does not have standing to pursue to any alleged claims.

WHEREFORE, for the reasons stated above and in its supporting Memorandum, VMIAA respectfully requests that the Court grant its Motion to Dismiss, dismiss the Amended Complaint in its entirety and with prejudice, award it its reasonable attorneys' fees and costs under 42 U.S.C § 1988(b) and Virginia Code §18.2- 500(B), and award it such additional relief as the Court deems fair and proper.

Respectfully submitted,

VMI ALUMNI ASSOCIATION.

/s/ Michael J. Finney
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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2024, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which then sent a notification of such filing (NEF) to all counsel of record.

/s/ Michael J. Finney _____